

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Steven J. HATFILL, M.D.,)
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 Plaintiff,)
)
 v.) Civil No. 1:03-CV-01793 (RBW)
)
 Attorney General Alberto GONZALES, *et al.*,)
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 Defendants.)
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**PLAINTIFF’S MOTION TO
EXTEND DISCOVERY DEADLINE**

On April 20, 2007, the Court extended discovery for an additional sixty days to permit Dr. Hatfill to further identify anonymous DOJ and FBI sources who leaked information about Dr. Hatfill to the press. Since that time, Dr. Hatfill has diligently pursued discovery. To date, however, Dr. Hatfill has been frustrated in his efforts to discover this information by the objections of the press, their invocations of a reporter’s privilege, and their motions to quash. Dr. Hatfill has therefore been diverted to motions practice rather than depositions and document review during the sixty-day extension. The various motions filed by Dr. Hatfill and the press are now ripe for resolution and the Court has scheduled a hearing on these matters for June 26, 2007. Accordingly, Dr. Hatfill respectfully requests that the Court extend discovery for forty-five days from entry of its orders on the pending discovery motions. As grounds for this motion, Dr. Hatfill states as follows:

1. Following a hearing on Dr. Hatfill’s motion to compel discovery from Defendants, during which the parties requested the Court’s guidance on whether specific identities of anonymous DOJ and FBI sources was necessary to Dr. Hatfill’s case, the Court indicated that Dr. Hatfill would be proceeding “at his peril” if he did not attempt to further

identify the anonymous DOJ and FBI sources. Order at 3, Mar. 30, 2007 (Dkt. 144). The Court directed Dr. Hatfill to advise the Court by April 16, 2007, whether he requested an extension of discovery for this purpose. *Id.*

2. On April 16, 2007, Dr. Hatfill notified the Court of his intention to pursue further discovery on the identities of the anonymous DOJ and FBI sources and requested sixty days in which to conduct this discovery. Praecipe Regarding Discovery at 1, Apr. 16, 2007 (Dkt. 145). Dr. Hatfill further noted that “counsel for interested reporters and media entities ha[d] expressed their inclination to oppose any discovery that would identify their sources” and that in the event the reporters and media companies refused to comply with subpoenas, “Dr. Hatfill may seek additional time from the Court beyond the 60 days provided.” *Id.*

3. On April 20, 2007, the Court granted Dr. Hatfill sixty days to “conduct further discovery.” Order on Discovery & Referral to Mediation, Apr. 20, 2007 (Dkt. 146). This was the first discovery extension granted by the Court.

4. Pursuant to the April 20 Order, Dr. Hatfill served on April 23, 24, and 25, 2007, subpoenas on eight media companies requesting testimony and documents concerning the identities of anonymous DOJ and FBI sources who leaked information about Dr. Hatfill that was reported in specifically identified articles or broadcasts.¹ *See* Ex. A. Dr. Hatfill set a reasonable return date of May 7 for the requested documents. *Id.* In addition, Dr. Hatfill scheduled the deposition of these media companies over a four-day period beginning on May 9. *See* Ex. B.

5. On April 27, 2007, Defendants moved to prevent Dr. Hatfill from pursuing additional discovery on the ground that the parties allegedly had an understanding that Dr. Hatfill would only move to compel testimony from the six reporters previously deposed. Defs.’ Mot. &

¹ On April 27, 2007, Dr. Hatfill served an amended subpoena and notice of deposition on The Washington Post to reflect a corporate name change.

Mem. for Clarification, Apr. 27, 2007 (Dkt. 147). Dr. Hatfill promptly opposed this motion, *see* Pl.’s Opp’n to Mot. Clarification, May 2, 2007 (Dkt. 149), and on May 31, the Court denied Defendants’ motion stating that Dr. Hatfill “is entitled to depose any third party who he in good faith believes possess information pertaining to the alleged source or sources at the Department of Justice or the Federal Bureau of Investigation who disclosed information to news reporters concerning the criminal investigation,” Order at 2, May 31, 2007 (Dkt. 180).

6. The media companies also objected to Dr. Hatfill’s discovery requests. Specifically, pursuant to Federal Rule of Civil Procedure 45, each media company objected to producing documents identifying or tending to identify their anonymous DOJ and FBI sources. *See* Ex. C. Additionally, seven of the media companies moved to quash the subpoenas. *See* Mem. ABC, Wash. Post, & Newsweek Supp. Mot. Quash, May 3, 2007 (Dkt. 152); Mem. Supp. Mot. by CBS Broadcasting Inc. to Quash Subpoena, May 8, 2007 (Dkt. 156); Mem. Supp. Mot. Quash Assoc. Press & Balt. Sun Co., May 8, 2007 (Dkt. 159); Mem. Supp. Mot. by The New York Times Co. to Quash Subpoenas, May 8, 2007 (Dkt. 162). Dr. Hatfill promptly opposed those motions as well. *See* Pl.’s Consolidated Opp’n Mots. Quash, May 17, 2007 (Dkt. 165). In light of the several motions to quash and the Defendants’ motion for clarification, Dr. Hatfill agreed to reschedule the media companies’ depositions until after the Court resolved the motions to quash. *See* Ex. D.

7. On May 9, 2007, Dr. Hatfill moved to compel further testimony from five reporters previously deposed. *See* Pl.’s Mem. Supp. Mot. Compel Further Test., May 9, 2007 (Dkt. 157). Those reporters had previously testified that they obtained information they reported about Dr. Hatfill from confidential sources employed by the DOJ and FBI. However, on the ground of the reporter’s privilege, these reporters refused to disclose the sources’ identities or

any other identifying information. The reporters have opposed Dr. Hatfill's motion. *See* Mem. Locy Opposing Mot. Compel, May 23, 2007 (Dkt. 169); Opp'n Isikoff, Klaidman, & Lengel Mot. Compel, May 23, 2007 (Dkt. 171); Stewart Mem. Opp'n Mot. Compel, May 23, 2007 (Dkt. 174).

8. On May 18, 2007, after consultation with counsel for the media companies and reporters, Dr. Hatfill moved to compel production of the documents requested in the subpoenas served on the media companies and their reporters. *See* Pl.'s Mem. Supp. Mot. Compel Docs., May 18, 2007 (Dkt. 166). The media companies and reporters have opposed Dr. Hatfill's motion to compel in part on the ground that the motion is premature. *See* Opp'n ABC, Wash. Post, Newsweek, Isikoff, Klaidman & Lengel Mot. Compel Docs., June 1, 2007 (Dkt. 181); CBS Broadcasting Inc.'s Mem. Opp'n Mot. Compel Docs., June 1, 2007 (Dkt.182); Stewart's Mem. Opp'n Mot. Compel Docs., June 1, 2007 (Dkt. 183); Assoc. Press & Balt. Sun Co.'s Opp'n Mot. Compel Docs., June 1, 2007 (Dkt. 184).

9. On June 4, 2007, Dr. Hatfill moved to compel further testimony from one reporter who had previously testified pursuant to a subpoena from the Southern District of New York. That reporter had previously testified that he obtained information he reported about Dr. Hatfill from two FBI employees. However, on the ground of the reporter's privilege, this reporter refused to disclose the sources' identities or any other identifying information. The reporter opposed Dr. Hatfill's motion. The matter has been fully briefed and is set for argument on June 19 before Judge Hellerstein of the Southern District of New York.

10. Extending the discovery deadline for Dr. Hatfill to pursue the identities of the anonymous DOJ and FBI officials who leaked information about Dr. Hatfill will not affect any deadlines set in this case. Currently, the Court has scheduled a June 26 hearing on the motions

described above and a July 27 status conference. No schedule has been set for dispositive motions or trial.

11. Dr. Hatfill has conferred with Defendants pursuant to Local Civil Rule 7(m). Defendants, through counsel, have stated that they will take no position on this request for an extension of discovery.

12. In considering whether to grant a motion for a discovery extension, the Court primarily considers the diligence of the requesting party. *See Nat'l R.R. Passenger Corp. v. Expresstrak, L.L.C.*, No. 02-1773, 2006 WL 2711533, at *2 (D.D.C. Sept. 21, 2006). Where the discovery deadline “cannot reasonably be met despite the diligence of the party seeking the extension,” the Court in its discretion may modify the deadline. *Id.* Here, despite Dr. Hatfill’s diligence, he is unable to complete the requested discovery within the existing deadline. Because of the media companies’ and reporters’ objections to producing any information identifying their anonymous sources, Dr. Hatfill has had to file motions to compel this information. In addition, the media companies have moved to quash the subpoenas. Briefing on the resultant motions over reporters’ privilege, document objections, and motions to quash was completed (without extensions) only this week.

13. Dr. Hatfill accordingly requests a forty-five day discovery extension from entry of the Court’s orders resolving the pending discovery motions. Dr. Hatfill anticipates that with the cooperation of the media entities and reporters with respect to providing the identities of their anonymous DOJ and FBI sources, he will be able to proceed promptly with discovery of and relating to these sources. There remains, however, a very distinct possibility that despite Dr. Hatfill’s best efforts, completing discovery within the forty-five-day period may be thwarted. First, in the event the Court orders the media entities and reporters to disclose the identities of

their anonymous sources, they unfortunately may refuse to comply with the Court's order. In which case additional motions and briefing will be necessary on the issue of contempt. Second, once Dr. Hatfill has obtained the names of the anonymous sources, these sources also may resist Dr. Hatfill's discovery. Notwithstanding these possibilities, Dr. Hatfill believes at this time that a forty-five day extension, assuming compliance and cooperation from the press and their sources, will be adequate time for Dr. Hatfill to complete this additional discovery, and therefore, respectfully requests that the Court grant this motion to extend discovery.

Dated: June 13, 2007

Respectfully submitted,

/s/ Steven A. Fredley

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